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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,634	10/22/1998	MORDECHAI TURI	JWB-98-9-P	2106

7590 03/31/2004

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

31

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 36 is rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. (US 6,494,872).

With reference to claim 36, Suzuki et al. disclose an integral, disposable, elasticized absorbent article defined by spaced apart longitudinal sides having a longitudinal axis and spaced apart lateral sides having a lateral axis comprising a topsheet, a backsheet (col. 5, lines 64 – 67), a waist portion consisting of a front waist portion, a back waist portion, a crotch portion and a pair of spaced apart leg openings (figure 1), an absorbent layer having a longitudinal axis and a horizontal axis disposed between the topsheet and the backsheet (col. 5, lines 64 – 67), means for fastening the article around the waist of the wearer, and two arched shaped barrier layers (11) comprising a first generally concave barrier layer having one end attached between the middle portion and the distal end of one of said longitudinal sides and a second end attached between the middle portion and the distal end of the other one of said longitudinal sides thereby forming a first retaining enclosure between the first barrier layer and the topsheet and a second generally concave elasticized barrier layer having

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one end attached between the middle portion and the proximal end of one of said longitudinal sides and the other end attached between the middle portion and distal end of the other one of said longitudinal sides thereby forming a second retaining enclosure between the second barrier layer and the topsheet, and wherein the first and second arched-shaped barrier layers intersect each other to form a double barrier layer on the topsheet of the article as set forth in col. 4, lines 6 – 17 and figure 3d.

The article of Suzuki et al. is formed on an assembly as shown in figure 3d. The article is secured over an absorbent body and as shown in figure 3d the longitudinal ends, the area just outside of the aperture designated as "4", depicts the first and second sheets being attached to the article as claimed and overlapping.

### ***Response to Arguments***

Applicant's arguments filed January 15, 2004 have been fully considered but they are not persuasive.

The applicant argues that the difference are discernable from comparison of the drawings illustrating the absorbent article in Suzuki et al and the absorbent article shown in figures 20 – 21 of the present invention. The applicant further argues that the differences are further highlighted by col. 2, lines 3 – 47 of Suzuki et al. Lastly, the applicant states that the topsheet of Suzuki et al. comprises two separate sheet and that the sheet intersect each other only at the waist portion and do not provide a double barrier layer in the crotch region.

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Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a double barrier layer in the crotch portion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The topsheet is not precluded from comprising two separate sheets nor is it precluded from intersecting only at a waist portion. There is also no requirement for a double barrier layer in the crotch portion.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Michele Kidwell*

Michele Kidwell  
March 30, 2004

  
JOHN S. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700